

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of Atlantic Tele-Network, Inc. and)	WT Docket No. 09-119
Cellco Partnership d/b/a Verizon Wireless)	
)	
For Consent to Assign or Transfer Control)	
of Licenses and Authorizations)	
To: The Commission		

**CONSOLIDATED OPPOSITION OF ATLANTIC TELE-NETWORK, INC.
TO APPLICATIONS FOR REVIEW**

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SUMMARY

The Commission should deny the Applications for Review, filed by each of NABOB and Telephone USA, because they fail to satisfy the Commission's standard for review. Under section 1.115 of the Commission's Rules, NABOB and Telephone USA must demonstrate that the *Bureau Order* either (1) conflicts with established law, (2) involves a question of law or policy that the Commission has not previously ruled on, (3) applies Commission precedent that should be overturned or revised, (4) reflects an erroneous finding regarding a material question of fact, or (5) results from procedural error. NABOB and Telephone USA fail to satisfy any of these exacting standards.

Indeed, the Applications for Review do little more than reiterate NABOB's and Telephone USA's oft-repeated claim that Verizon Wireless was obligated under the *Verizon/ALLTEL Order* to divest the ALLTEL properties to minority-owned or socially disadvantaged entities. Any such arguments should have been made in a challenge to the *Verizon/ALLTEL Order* and not as a collateral attack here. The Commission expressly declined to require that Verizon Wireless divest the ALLTEL properties to any particular class of buyer, and imposed no obligations on Verizon Wireless to follow any particular divestiture process. NABOB's assertion that the *Verizon/ALLTEL Order* raises a legal question upon which the Commission has not passed is meritless. The relevant language is unambiguous and raises no legal issues that require legal interpretation.

Moreover, to the extent that the Commission *encouraged* Verizon Wireless to "assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups," Verizon Wireless did just that. Telephone USA's own filing states that Verizon Wireless encouraged Telephone USA to participate at every step of the bidding process and even guided Telephone USA's efforts. Furthermore, in its selection of ATN as buyer, Verizon Wireless followed the Commission's suggestion and chose a new entrant to the retail wireless business that is focused on rural underserved areas. NABOB and Telephone USA are arguing that the Commission should find that the public interest would have been better served had Verizon Wireless selected a buyer other than ATN for these divestiture assets. Section 310(d) of the Communications Act, however, expressly forbids the Commission from undertaking an analysis of other potential buyers not selected by the transferor. The Applications for Review should be denied on these grounds alone.

NABOB and Telephone USA also incorrectly argue that the Bureaus violated the *Verizon/ALLTEL Order*, the Communications Act, and Congressional and Commission policy by authorizing Verizon Wireless to divest the properties to ATN rather than to a minority-owned or socially disadvantaged entity. The plain language of the *Verizon/ALLTEL Order* speaks for itself and nothing in the Communications Act or Congressional or Commission policy obligated Verizon Wireless to divest the ALLTEL properties to a particular class of buyers, or compelled the Commission to ensure that it do so. The *Bureau Order* thus is entirely consistent with established law.

Finally, arguments alleging that ATN lacks the ability to compete in the divestiture markets should be dismissed outright. The *Bureau Order* carefully reviewed ATN's financial

model, market approach scenarios, and operations overview, and found no support for any claim that ATN lacks the ability to compete effectively in the divestiture markets. Telephone USA ignores these findings and merely reiterates previous allegations found to be unsubstantiated.

NABOB and Telephone USA have offered no credible legal or factual challenge to the *Bureau Order*. The Commission should therefore promptly deny the Applications for Review filed by NABOB and Telephone USA and affirm the *Bureau Order*.

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Atlantic Tele-Network, Inc. (“ATN”), by its attorneys and pursuant to 47 C.F.R. § 1.115(d), hereby submits this consolidated opposition to the Applications for Review filed by the National Association of Black Owned Broadcasters, Inc. (“NABOB”) and Telephone USA Investments, Inc. (“Telephone USA”) in the above-captioned proceeding.¹ As demonstrated below, the Applications for Review are without merit and should be summarily denied.

I. BACKGROUND

On April 20, 2010, the Wireless Telecommunications and International Bureaus (jointly the “Bureaus”) granted the applications of ATN and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) for authority to assign or transfer control of certain licenses and authorizations from Verizon Wireless to ATN’s wholly owned subsidiary, Allied Wireless

¹ Application for Review of The National Association of Black Owned Broadcasters, Inc., WT Docket No. 09-119 (filed May 12, 2010) (“NABOB Application for Review”); Application for Review of Telephone USA Investments, Inc., WT Docket No. 09-119 (filed May 20, 2010) (“Telephone USA Application for Review”). By letter dated May 27, 2010, the Wireless Telecommunications Bureau extended the deadline for filing oppositions to the NABOB Application for Review until June 4, 2010 to bring that deadline in concert with the deadline for opposing the Telephone USA Application for Review. Letter from Katherine M. Harris, Deputy Chief, Wireless Telecommunications Bureau, to Jonathan V. Cohen, Wilkinson Barker Knauer, LLP and Nancy J. Victory, Wiley Rein, LLP (May 27, 2010).

Communications Corporation.² In so doing, the Bureaus partially effectuated the condition imposed by the Commission in the *Verizon/ALLTEL Order* requiring that Verizon Wireless divest certain business units in 105 markets in order to acquire licenses and authorizations held by ALLTEL Corporation.³

The *Bureau Order* was based upon an extraordinarily detailed factual record developed over nine months that involved numerous requests from the Bureaus for additional information and documents from Verizon Wireless, ATN and other parties.⁴ The documents and information provided to the Bureaus included information relating to ATN's confidential business plans concerning the relevant divestiture markets, ATN's transition plans and capabilities, ATN's service, rate plans, handsets, and detailed information regarding the selection process employed by Verizon Wireless for the divestiture markets.⁵ Based upon this fulsome record, the Bureaus concluded that approval of the proposed transaction will "promote mobile wireless competition," and will be "likely to result in meaningful transaction-specific public interest benefits."⁶ The Bureaus also upheld Verizon Wireless's selection process, concluding that the process was in keeping with the *Verizon/ALLTEL Order*, which placed no restrictions upon Verizon Wireless's

² *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, *Memorandum Opinion and Order*, DA 10-661 (rel. Apr. 20, 2010) ("*Bureau Order*").

³ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, 23 FCC Rcd 17444 (2008) ("*Verizon/ALLTEL Order*").

⁴ See *Bureau Order* at ¶¶ 12-17.

⁵ See *id.* ¶¶ 16-17.

⁶ *Id.* ¶¶ 1, 43.

choice of buyer, and was consistent with the Commission's competitive objectives in requiring divestitures in 105 markets.⁷

In addition to the Bureaus' thorough and probing review, the United States Department of Justice ("DOJ") reviewed the instant transaction pursuant to the *Final Judgment* issued by the U.S. District Court for the District of Columbia in connection with the Verizon Wireless/ ALLTEL transaction.⁸ Under the *Final Judgment*, DOJ was required to ensure that Verizon Wireless's divestiture of the ALLTEL assets is "accomplished such that the 'assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services.'"⁹ DOJ also had to determine that the "Acquirer or Acquirers . . . has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services."¹⁰ Applying these standards, the DOJ approved Verizon Wireless's proposed divestiture of 26 markets to ATN on April 7, 2010.¹¹

Nevertheless, NABOB filed an Application for Review on May 12, 2010; Telephone USA's Application for Review followed on May 20, 2010. NABOB claims that the *Bureau Order* erred in three particulars. First, NABOB erroneously asserts that the Bureaus' approval of ATN as the acquirer of the divestiture assets violated provisions of the Communications Act of 1934, as amended (the "Communications Act") which it alleged require the Commission to

⁷ *Id.* ¶ 65.

⁸ *Bureau Order* at ¶ 19 (citing *United States v. Verizon Communications, Inc.*, 607 F.Supp.2d 1 (D.D.C. 2009) ("*Final Judgment*").

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (citing Atlantic Tele-Network, Inc. Announces Department of Justice Approval for Acquisition of Former Alltel Assets, AWCC Press Release (Apr. 8, 2010), *available at* <http://www.awcc.com/news.html#040810>).

promote diversity of ownership of telecommunications facilities.¹² Second, NABOB argues that the *Bureau Order* involved a question of law the Commission had not previously resolved, namely the meaning of certain language from the *Verizon/ALLTEL Order*.¹³ Finally, NABOB alleges that the *Bureau Order* erred in finding the process by which Verizon Wireless selected ATN as the acquirer of its divestiture assets to be fair and consistent with the *Verizon/ALLTEL Order*.¹⁴

Telephone USA's Application for Review raises essentially the same issues. Telephone USA claims that the approval of ATN as the acquirer of Verizon Wireless's divestiture assets violated Congressional and Commission policy of promoting diversity of ownership of telecommunications facilities.¹⁵ After providing a detailed discussion regarding the extraordinary steps that Verizon Wireless took to encourage their participation in the bidding process, Telephone USA nevertheless asserts that Verizon Wireless's selection process was somehow unfair and improperly worked against Telephone USA.¹⁶ Finally, Telephone USA argues, without support, that ATN lacks the ability to compete effectively in the divestiture markets and, therefore, that the *Bureau Order's* finding that the acquisition by ATN would serve the public interest is in error.¹⁷

As shown below, neither NABOB nor Telephone USA has met the standard, set forth in section 1.115 of the Commission's Rules, under which applications for review are judged. The NABOB and Telephone USA Applications for Review entirely lack foundation in law or fact

¹² NABOB Application for Review at 7-10.

¹³ *Id.* at 10-14.

¹⁴ *Id.* at 15-19.

¹⁵ Telephone USA Application for Review at 10-13.

¹⁶ *Id.* at 13-21.

¹⁷ *Id.* at 21-22.

and offer no arguments sufficient to warrant reversal or alteration of the *Bureau Order*. Indeed, the Bureaus' critical findings – that Verizon Wireless's selection process was in keeping with the *Verizon/ALLTEL Order*, and that ATN's acquisition of the ALLTEL properties served the public interest – are sound and easily affirmed.

II. THE APPLICATIONS FOR REVIEW OFFER NO BASIS FOR REVERSAL OR ALTERATION OF THE *BUREAU ORDER*

In order to obtain relief through an Application of Review of the *Bureau Order*, NABOB and Telephone USA must satisfy at least one of the criteria set out in section 1.115(b)(2) of the Commission's Rules. Specifically, NABOB and Telephone USA must show that the *Bureau Order* either: (1) conflicts with established law; (2) involves a question of law or policy that the Commission has not previously ruled on; (3) applies Commission precedent that should be overturned or revised; (4) reflects an erroneous finding regarding a material question of fact; or (5) results from procedural error.¹⁸ As each of NABOB and Telephone USA fail to meet this burden, their filings do not provide any basis for reversal or modification of the *Bureau Order*.¹⁹

Stripped to their essence, NABOB's and Telephone USA's arguments are nothing more than complaints that Federal policy and the public interest would have been better served had Verizon Wireless divested the properties to a small business or minority-owned entity rather than to ATN, a new entrant into the rural wireless retail market.²⁰ The Communications Act,

¹⁸ 47 C.F.R. § 1.115(b)(2).

¹⁹ This is particularly the case given that, although both NABOB and Telephone USA are now asking the Commission to reverse the *Bureau Order* and unwind the Verizon Wireless and ATN transaction, neither party sought a stay to prevent the transaction from being consummated.

²⁰ NABOB Application for Review at 10 (“[T]he proposed transaction will do serious damage to the Commission's statutory duty to promote diversity of ownership in the telecommunications industry and fails to demonstrate that other public interest benefits will offset this damage to diversity of ownership.”); Telephone USA Application for Review at 12 (“The *ALLTEL Merger Order* made it clear that the Commission believed the public interest would be advanced if Verizon took steps to sell the divestiture assets to companies that face disadvantages in obtaining access to the wireless marketplace.”).

however, expressly forbids the Commission from considering whether a transfer of a Title III license to a different buyer might better serve the public interest. Section 310(d) provides, in pertinent part: “. . . the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.”²¹ NABOB’s and Telephone USA’s Applications for Review must be denied on this basis alone.

A. The *Bureau Order* Does Not Reflect Erroneous Findings of Material Questions of Fact

NABOB and Telephone USA both argue that the Bureaus made erroneous findings of fact when they concluded that Verizon Wireless’s selection process complied with the *Verizon/ALLTEL Order*.²² Specifically, they argue that the *Verizon/ALLTEL Order* obligated Verizon Wireless to (1) divest the ALLTEL properties to a particular category or categories of buyers, and (2) conduct an open and transparent divestiture process. In their view, Verizon Wireless’s divestiture process met neither requirement. NABOB’s and Telephone USA’s arguments are unfounded and lack any merit – the *Verizon/ALLTEL Order* imposed no such legal obligations on Verizon Wireless and, in any event, Verizon Wireless complied with the plain language of the order.

1. Verizon Wireless divested the ALLTEL properties consistent with the *Verizon/ALLTEL Order*

NABOB and Telephone USA both suggest repeatedly that the *Verizon/ALLTEL Order* obligated Verizon Wireless to adopt procedures aimed at assisting minorities to acquire the

²¹ 47 U.S.C. § 310(d).

²² NABOB Application for Review at 15-19; Telephone USA Application for Review at 13-21.

divestiture assets.²³ This argument is fallacious. Beyond the procedures specified in the *Final Judgment*, Verizon Wireless was under no obligation to follow any particular procedures to find buyers for the properties to be divested under the *Verizon/ALLTEL Order*. Indeed, the Commission explicitly declined to impose any such obligations upon Verizon Wireless:

Although we decline to impose specific conditions regarding the potential acquirers of and methods for selling the Divestiture Assets, we encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible.²⁴

The Commission's language clearly belies NABOB's and Telephone USA's assertions that Verizon Wireless was obligated to adopt specific divestiture procedures or to divest the properties to any particular entity or entities.

NABOB disregards the plain language of the *Verizon/ALLTEL Order*, arguing that the Commission's language was unclear and left an open legal question regarding the meaning of that language. Thus, NABOB concludes, in finding that Verizon Wireless's divestiture to ATN was in keeping with the *Verizon/ALLTEL Order*, the Bureaus made an improper "major ruling of

²³ See NABOB Application for Review at 11 ("NABOB demonstrated that [Verizon Wireless] ignored the Commission's *direction* to make an effort to sell the Divestiture Assets to minorities, new entrants and small carriers. . . ." (emphasis added); *id.* at 13 (" . . . the Commission *expected* [Verizon Wireless] to create mechanisms that would assist minorities in getting over the financial commitment barrier." (emphasis added); *id.* at 15 (referencing "the Commission's *instruction* to 'consider and implement mechanisms to assist minorities . . .'" (emphasis added)); Telephone USA Application for Review at 2 ("First Verizon and then the *ATN Approval Order* disregarded the Commission's *instructions*." (emphasis added)); *id.* at 7 (" . . . instead of complying with the Commission's *intent* that Verizon seek to involve new entrants and small businesses, Verizon structured its own bidding 'rules' . . ." (emphasis added); *id.* at 8 ("Verizon failed to satisfy the Commission's *expectation* that at least some of the ALLTEL divestiture properties would be sold to new entrants to the wireless industry or small or minority-owned businesses." (emphasis added)); *id.* at 12 ("The Commission included in its *directions* that such groups be included in the process When it consummated its transaction with ALLTEL, Verizon accepted these *terms* and undertook the *obligation* to conduct a fair and inclusive divestiture process in accordance with the requirements of the *ALLTEL Merger Order* . . ." (emphasis added)).

²⁴ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17518 (emphasis added).

law and policy which the Commission has not previously resolved.”²⁵ This argument is rank sophistry. The Commission’s language “we decline to impose specific conditions” is unambiguous and not open to interpretation – the Commission did not impose specific obligations on Verizon Wireless but merely “encouraged” it to “consider” implementation of such mechanisms “to the extent possible.”²⁶

Moreover, to the extent that either NABOB or Telephone USA was dissatisfied with the Commission’s decision not to condition the divestiture of the ALLTEL properties, their remedy was to seek review of the *Verizon/ALLTEL Order* on this point. They did not do so and the order is final as to these parties.²⁷ NABOB and Telephone USA, therefore, may not maintain a collateral attack on the *Verizon/ALLTEL Order* in this proceeding.

It is, therefore, beyond dispute that Verizon Wireless’s divestiture to ATN was in keeping with the plain language of the *Verizon/ALLTEL Order*. The Commission *encouraged* Verizon Wireless to take steps to divest to “regional, local, and rural wireless providers, *new entrants*, small businesses, and businesses owned by minorities or socially disadvantaged groups”²⁸ and Verizon Wireless did just that. NABOB and Telephone USA do not deny that ATN is a new,

²⁵ NABOB Application for Review at 12.

²⁶ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17518.

²⁷ Telephone USA’s citation to a petition for reconsideration of the *Verizon/ALLTEL Order* does not compel a contrary conclusion. See Telephone USA Application for Review at 13, n. 27. The fact remains that, because neither NABOB nor Telephone USA sought administrative or judicial review of the *Verizon/ALLTEL Order*, the order is final as to both parties. See *BellSouth Corp. v. FCC*, 17 F.3d 1487 1489 (D.C. Cir. 1994) (“[F]inality with respect to agency action is a party-based concept.’ . . . Therefore, a party that stays before an agency to seek reconsideration of an order cannot at the same time appear before a court to seek review of that same order, any more than the party could literally be in two places at the same time.”); *Petroleum Communications v. FCC*, 22 F.3d 1164, 1171 n. 6 (D.C. Cir. 1994) (“ . . . the existence of a pending petition for reconsideration on this issue does not render the agency action nonfinal with respect to [parties who did not seek reconsideration].”); *Public Citizen, Inc. v. Mineta*, 343 F.3d 1159, 1170 (9th Cir. 2003) (“ . . . persons may not extend the . . . time period for seeking judicial review by piggy-backing on to a petition for reconsideration filed by another party.”).

²⁸ *Verizon/ALLTEL Order*, 23 FCC Rcd at 17518 (emphasis added).

rural entrant in the U.S. wireless retail market and as such fulfills a category identified by the Commission.

2. Verizon Wireless’s selection of ATN was fair and reasonable

NABOB’s and Telephone USA’s arguments that Verizon Wireless’s divestiture process somehow lacked openness and transparency are similarly unavailing. NABOB and Telephone USA’s arguments are little more than a rehash of ones they made previously to the Bureaus. In light of NABOB’s and Telephone USA’s concerns (expressed in petitions to deny the transfer applications), the Bureaus sought and received unusually detailed information from Verizon Wireless, ATN, and Telephone USA regarding, among other matters, the bidding process for the divestiture assets.²⁹ This material was available to NABOB and Telephone USA through Protective Orders issued in this matter.³⁰ The Bureaus’ conducted a probing “review [of] the extensive record compiled regarding the conduct of the bidding process Verizon Wireless employed”³¹ and concluded that the bidding process “complied with the Commission’s requirements imposed in the *Verizon Wireless-ALLTEL Order* and does not otherwise undercut the competitive objectives the Commission sought to implement by requiring divestitures in 105 markets.”³²

NABOB and Telephone USA fail to show any material flaws in the Bureaus’ evaluation of the record evidence. The evidence produced to the Bureaus shows that Verizon Wireless received two binding, fully-financed bids for the divestiture assets and that ATN’s bid was the

²⁹ *Bureau Order* at ¶¶ 16-17.

³⁰ *See id.* ¶ 16.

³¹ *Id.* ¶ 45.

³² *Id.* ¶ 65.

higher one.³³ In short, ATN's bid was not an "outlier" bid that could only have been arrived at through unfair dealing. Indeed, the record shows that "ATN was not afforded any special treatment."³⁴

NABOB and Telephone USA have offered no evidence that calls this conclusion into question. They instead resort to intemperate speculation, asserting that Verizon Wireless's bidding process "reeks of inside information"³⁵ and that Verizon Wireless was "stringing along small business bidders like Telephone USA."³⁶ NABOB and Telephone USA rely on unsubstantiated "word on the street" allegations³⁷ and gossip to conclude that something must have been amiss in the bid process because the per subscriber price bid by ATN was below the price bid by AT&T in the companion divestiture.³⁸ Their suspicions are directly contradicted by the record evidence as noted above. The Commission should not entertain such blatant disregard for fact-finding in favor of mud-slinging and should deny the Applications for Review.

B. The *Bureau Order* Does Not Violate the Communications Act or Congressional and Commission Policy

NABOB and Telephone USA also contend that the Commission should reverse the *Bureau Order* because it conflicts with the Communications Act and Congressional and Commission policy. These arguments are without merit and should be rejected.

³³ *Bureau Order* at ¶ 52; see also Letter from Nancy J. Victory, Wiley Rein LLP, counsel for Verizon Wireless to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 09-119, at 13-14 (Dec. 18, 2009), attached Response of Verizon Wireless to the Wireless Telecommunications Bureau's November 19, 2009 General Information Request ("Victory Letter").

³⁴ Victory Letter at 14.

³⁵ NABOB Application for Review at 18.

³⁶ Telephone USA Application for Review at 2.

³⁷ See NABOB Application for Review at 15, 16.

³⁸ See *id.* at 17-18; Telephone USA Application for Review at 19-21.

NABOB contends that the *Bureau Order* conflicts with sections 257, 309(i)(3), 309(j)(3)(B) and 310(d) of the Communications Act.³⁹ NABOB implies that these provisions, read together, impose a statutory obligation upon the Commission to “promote diverse ownership of telecommunications facilities by small businesses and minority-owned businesses.”⁴⁰ These provisions do not bear the weight NABOB would give them.

Section 257 of the Communications Act, enacted in 1996, required the Commission to conduct a proceeding to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications and information services.⁴¹ The Commission completed that proceeding more than a decade ago and section 257 provides no basis for a challenge here.⁴²

NABOB’s citations to sections 309(i)(3), 309(j)(3)(B), and 310(d) of the Communications Act are similarly unavailing. Section 309(i)(3) is simply not applicable to the instant divestiture of wireless communications licenses; it deals exclusively with licenses awarded pursuant to lotteries and calls for the Commission to adopt preferences to increase “the diversification of ownership of *the media of mass communications*.”⁴³ Section 309(j)(3)(B)

³⁹ NABOB Application for Review at 8-10.

⁴⁰ *Id.* at 10.

⁴¹ 47 U.S.C. § 257. Section 257 also includes a tri-annual reporting requirement, but these reports are just that and they cannot, in and of themselves, direct that licenses be placed with any particular class of licensee. *Id.*

⁴² See *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 12 FCC Rcd 16802 (1997).

⁴³ 47 U.S.C. § 257, § 309(i) (emphasis added). NABOB admits that section 309(i) is fundamentally inapposite. NABOB Application for Review at 9, n.15 (“Section 309(i)(3) does not explicitly indicate that the wireless licenses involved in the instant transaction are subject to that section.”). Given the limitations of this provision, NABOB asks the Commission to “regulate the transaction in this proceeding as one covered by Section 309(i)(3).” *Id.* NABOB, however, provides no justification upon which the Commission may take the extraordinary step of interpreting unambiguous statutory language to create new legal obligations on wireless licensees. Such action by the Commission would be accorded no deference on judicial review. See *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984) (“First,

applies exclusively to Commission's awarding of licenses pursuant to competitive bidding, and does not govern the subsequent divestiture of previously auctioned licenses.⁴⁴ Section 310(d) simply provides that the Commission may authorize an assignment or transfer of a radio license only upon a finding the transaction would serve the public interest.⁴⁵ As noted the Bureaus' made the requisite public interest findings here, and fully supported them on record evidence.⁴⁶ In short, the statutory provisions NABOB relies on are inapposite and do nothing to prove its point.

Telephone USA cites to section 257 of the Communications Act and to the "active interest" of "individual members of Congress" to argue that the Commission was under a "mandate" to expand "diversity of ownership in the wireless and other telecommunications industries to include small businesses and other under-represented groups."⁴⁷ Telephone USA then argues that the Bureaus abandoned this mandate by refusing to find that Verizon Wireless's divestiture process did not satisfy the requirement to put licenses in the hands of small businesses and under-represented groups.

always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.").

⁴⁴ 47 U.S.C. § 309(j)(3)(B). While section 309(j)(3)(B) directs the Commission to find ways to promote the dissemination of licenses "among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women," this language does not require incumbent licensees like Verizon Wireless to divest licenses to such entities; nor does it preclude acquisitions by new entrants to the U.S. wireless retail market such as ATN. The primary intent of section 309(j)(3)(B) is to avoid excessive concentration of licenses, a goal achieved by the award to ATN. *See generally Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, 13 FCC Rcd 8345, 8370, n. 143 (1998) ("... it has always been the Commission's goal to encourage the widest participation in the wireless market, in accordance with Congress' mandate.") (citing Communications Act § 309(j)(3)(B)).

⁴⁵ 47 U.S.C. § 310(d).

⁴⁶ *See Bureau Order* at ¶ 43.

⁴⁷ Telephone USA Application for Review at 10.

Telephone USA's argument also fails. As discussed above, neither section 257 of the Communications Act nor the *Verizon/ALLTEL Order* obligates the Commission or Verizon Wireless to divest the ALLTEL properties to minority-owned or socially disadvantaged entities.

C. Telephone USA Ignores the Bureaus' Finding That ATN Will Present Viable Competition in the Divestiture Markets

Telephone USA argues that the *Bureau Order* did not consider what it alleges are “serious questions about ATN’s ability to provide high-quality service and the fact that Verizon received substantially higher bids from small business and other non-traditional bidders . . . that had unquestionable experience providing high-quality retail domestic telecommunications experience [sic].”⁴⁸ As noted above, however, section 310(d) of the Communications Act bars the Commission from undertaking such comparative analyses.⁴⁹

Nevertheless, the Bureaus did consider issues related to ATN’s ability to compete and, based upon their “review of ATN’s financial model, market approach scenarios, and operations overview,” concluded that there is “no support for the claim that ATN lacks the ability to compete effectively in the ATN Divestiture Markets.”⁵⁰ To the contrary, the Bureaus examined the record of this proceeding carefully and found that:

- ATN “demonstrated its willingness to operate and invest in retail operations in its foreign markets as well as in the ATN Divestiture Markets.”⁵¹
- “ATN’s experience providing domestic wireless roaming services and retail wireline operations have demonstrated the company's knowledge of

⁴⁸ *Id.* at 22.

⁴⁹ See *supra* note 20 and accompanying text.

⁵⁰ *Bureau Order* at ¶ 35.

⁵¹ *Id.* ¶ 34. “Telephone USA’s reference to ATN’s mobile telephony/broadband retail experience in Guyana ignores the very different legal and competitive situations of these markets. Rather, ATN has demonstrated its commitment to invest and compete in the markets where it operates.” *Id.*

the U.S. market and the regulatory process as well as the company's commitment to providing competitive service offerings to consumers.”⁵²

- “ATN has hired experienced senior management with knowledge of the retail ATN Divestiture Markets, and has provided its transition service plans as part of this transaction.”⁵³
- ATN's financial model “illustrates knowledge of retail operations in the United States, and an indication of the viability of ATN as a competitor in the ATN Divestiture Markets of interest to it.”⁵⁴
- ATN submitted “a detailed analysis of the customers and competition within the ATN Divestiture Markets, and has developed a balanced and thorough approach to competition within these markets.”⁵⁵

Telephone USA fails to even mention this substantial record evidence, much less demonstrate any flaws in the Bureau's analysis of this evidence. Telephone USA's challenge to the *Bureau Order* on this point should be dismissed out-of-hand.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* ¶ 35.

⁵⁵ *Id.*

III. CONCLUSION

For the foregoing reasons, the Commission should deny the Applications for Review filed by NABOB and Telephone USA and affirm the *Bureau Order*.

Respectfully submitted,

ATLANTIC TELE-NETWORK, INC.

By: /s/ Jonathan V. Cohen
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Date: June 4, 2010

CERTIFICATE OF SERVICE

I, Bridget E. Anderson, do hereby certify that on June 4, 2010, true copies of the foregoing “Consolidated Opposition of Atlantic Tele-Network, Inc. to Applications for Review” were served upon the following by email and first class U.S. mail, postage pre-paid:

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